1	COPPER CANYON LAW			
2	43 East 1st Ave			
3	Mesa, Arizona 85210			
4	Office: (480) 833-3838 Fax: (480) 833-3838			
5	www.coppercanyonlaw.com			
	Timothy F. Coons (031208) Timothy@coppercanyonlaw.com			
6	Spencer M. Coons (032874) Spencer@coppercanyonlaw.com Attorney for Plaintiff			
7				
8	Allorney for 1 laining			
9	UNITED STATES DISTRICT COURT			
10	DISTRICT OF ARIZONA			
11	Sam Sobh, an individual	Case No.		
12	Plaintiff,	Case No.		
13	vs.			
14	Phoeniy Granhiy Inc. an Arizona			
15	Phoenix Graphix Inc., an Arizona Corporation; PGI/Phoenix Graphix, Inc. Prof. Charical Phoenix Graphix, Inc.			
	Profit Sharing Plan and Trust, an ERISA covered benefit plan; Brian Kotarski, an			
16	individual; Anne Kotarski, an individual, John Doe as the administrator of the PGI			
17	Plan			
18	Defendants.			
19	Plaintiff Sam Sobh, alleges as follows:			
20	Plaintiff, Sam Sobh, alleges as follows:			
21	PRELIMINARY STATEMENT			
22	1. Plaintiff was an employee of Pho			
23		n covered by the Employee Retirement		
24	Income Security Act ("ERISA.") 29 U.S.C. § 1001 et seq.			
25	3. In accordance with the ERISA plan documentation Plaintiff has requested			
26	the benefits under the plan and was refused.			
	4. Plaintiff has requested the reason	n for his denial, rights for appeal, and the		
27	paperwork required under ERISA, these requests have been denied.			
28				

- 5. Plaintiff was terminated by PGI.
- 6. Plaintiff has requested payment of his final earned wages, including all earned bonuses.
  - 7. Plaintiff has requested payout of his Paid Time Off.
  - 8. PGI has refused to payout Plaintiff's final earned wages and Paid Time Off.

#### JURISDICTION AND VENUE

- 9. The Claims asserted fall under 29 U.S.C. § 1001 *et seq.* and other applicable federal laws.
  - 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.
- 11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) because acts giving rise to the claims of the Plaintiff occurred within the District of Arizona, and Defendant regularly conducts business in and has engaged in the wrongful conduct alleged herein and, thus, is subject to personal jurisdiction in this judicial district.

#### **PARTIES**

- 12. At all relevant times alleged herein, Plaintiff resided in the State of Arizona in Maricopa County.
- 13. Defendant Phoenix Graphix, Inc. ("PGI") as a corporation organized under the laws of Arizona, with its principal place of business in Maricopa County.
- 14. The Master Plan Document for the PGI Plan is attached hereto as "Exhibit 1".
- 15. Defendant PGI / Phoenix Graphix, Inc. Profit Sharing Plan ("PGI Plan") is an employee benefit plan covered by ERISA.
- 16. It is believed that Brian Kotarski is the plan administrator as represented by Brian to Plaintiff on multiple occasions.
- 17. Since making requests for disbursements in compliance with the plan it has become unclear who is administering the plan.
  - 18. An ERISA plan must be administered by a Plan Administrator.

- 19. Whoever the ERISA Plan Administrator is, benefits under the PGI Plan have been improperly denied to Plaintiff by the Plan Administrator.
- 20. John Doe, is an unknown individual that is acting as the administrator of the PGI Plan. Upon information and belief they are a resident of Maricopa County or otherwise are subject to the Personal Jurisdiction of this Court.
- 21. John Doe's identity is not certain at this time, upon discovery this Complaint will be amended as required.

#### **FACTUAL ALLEGATIONS**

- 22. Plaintiff was employed by PGI for over a decade.
- 23. The relationship between Plaintiff and PGI became untenable and Plaintiff and PGI separated employment.
  - 24. While employed with PGI, Plaintiff became a beneficiary of the PGI Plan.
  - 25. The PGI Plan is a benefit plan subject to the requirements of ERISA.
- 26. Under the PGI Plan a beneficiary may request a distribution of funds for an immediate and heavy financial need for reasons enumerated in the plan. (*See*, Page 27 of Exhibit A).
- 27. Plaintiff has requested numerous times while experiencing heavy financial events to receive a distribution under the terms of the plan as enumerated in Section 7.1(A) rule and has been repeatedly denied.
- 28. The only reason for denial of the hardship distribution appears to be based on a summary plan document that contains provisions and ambiguous language that is not present in the master plan document.
- 29. In case of a conflict between the master plan document and the summary plan description, the master plan governs the plan.
- 30. As a result of these wrongful denials during periods of heavy financial need the Plaintiff is suffering Anxiety and Severe Depression.
- 31. Defendant has ignored Plaintiff's medical condition and the suffering caused by the wrongful actions.

- 32. Defendant's conduct is a breach of the fiduciary duties owed to all participants.
- 33. Plaintiff sent multiple clarification requests to the email provided in the Plan but has never received an answer or any of the requested materials in regards of the Plan from the specified address.
- 34. Plaintiff requested the corresponding documentation regarding the reason for his denial, procedure for appeal, and supporting paperwork as required under the PGI Plan and as required by ERISA.
- 35. Plaintiff has been refused his benefits under the PGI Plan, and he has not been provided with the required documentation regarding his denial and any rights for appeal.
- 36. Plaintiff earned commissions, bonus payments, and Paid Time Off prior to his termination that PGI has refused to pay to Plaintiff.
- 37. By doing so, PGI has unlawfully retained earned wages due and owing to Plaintiff.

#### **COUNT ONE**

### Improper Denial of Plan Benefit § 502 (a)(1)(B)

- 38. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.
  - 39. Plaintiff made a claim for benefits under the PGI Plan.
  - 40. Plaintiff's claim for benefits have been improperly denied.
- 41. Plaintiff has exhausted all administrative remedies under the PGI Plan that have been disclosed or made available to him.
- 42. The PGI Plan does not mandate exhaustion of administrative remedies prior to seeking judicial review.
  - 43. Plaintiff is entitled to the benefits under the PGI Plan.
  - 44. Plaintiff has been denied the benefits he is entitled to.

# Case 2:19-cv-05277-DWL Document 1 Filed 09/26/19 Page 5 of 6

ll.			
1	45.	As a direct result of Defendant's unlawful acts Plaintiff has suffered	
2	damages in an amount to be proven at trial.		
3	COUNT TWO		
4		Declaratory Relief § 502 (a)(1)(B)	
5	46.	Plaintiff realleges and incorporates by reference all allegations in all	
6	preceding paragraphs.		
7	47.	A controversy exists regarding the rights of Plaintiff between Plaintiff, the	
8	PGI Plan, and the PGI Plan administrator.		
9	48.	Plaintiff has been unable to obtain benefits as provided under the terms of	
10	the plan.		
11	49.	By reason of the foregoing clarification of Plaintiff's rights to future	
12	benefits under the terms of the plan is necessary.		
13	50.	Plaintiff is entitled to declaratory relief confirming his rights under the PGI	
14	Plan.		
15		COUNT THREE	
16		Improperly Retained Wages A.R.S. §23-350 et seq.	
17	51.	Plaintiff realleges and incorporates by reference all allegations in all	
18	preceding paragraphs.		
19	52.	Plaintiff was entitled to outstanding bonus payments as wages, prior to his	
20	termination.		
21	53.	Plaintiff was entitled to his Paid Time Off being cashed out per company	
22	practice.		
23	54.	These payments and funds constitute wages under Arizona Law.	
24	55.	PGI has improperly retained Plaintiff's wages in violation of A.R.S. 23-250	
25	et seq.		
26	56.	As a direct result of PGI's acts, Plaintiff has suffered damages in an amount	
27	to be proven at trial.		
28		PRAYER FOR RELIEF	

## Case 2:19-cv-05277-DWL Document 1 Filed 09/26/19 Page 6 of 6

1	WHEREFORE, Plaintiff respectfully requests that this Court grant the following		
2	relief in Plaintiff's favor and against Defendant:		
3	A.	For the Court to award all damages in an amount to be determined at	
4		trial;	
5	В.	For the Court to award incidental, compensatory and consequential damages	
6		in an amount to be determined at trial;	
7	C.	For the Court to award punitive damages for Defendant's knowing violation	
8		of the law in an amount to be determined at trial;	
9	D.	For the Court to award prejudgment and post-judgment interest;	
10	E.	For the Court to award Plaintiff's reasonable attorneys' fees and costs of the	
11		actions pursuant to any applicable law and all other causes of action set	
12		Forth herein; and	
13	F.	For such other relief as this Court shall deem just and proper.	
14		<b>DEMAND FOR JURY TRIAL</b>	
15	Plaintiff hereby requests that upon trial of this action, all issues be submitted to and		
16	determined by a jury except those issues expressly reserved by law for determination by		
17	the Court.		
18			
19	RESPECTFULLY SUBMITTED this 26th day of September, 2019.		
20		COPPER CANYON LAW LLC	
21		Spr Cran	
22		Spencer M. Coons 43 East 1 <sup>st</sup> Ave	
23		Mesa, Arizona 85210 Attorney for Plaintiff	
24			
25			
26			
27			

28